PUBLIC PROSECUTOR v. LING EE HUAT.

[Crim. Rev. Juris. (Laville, J.) December 12, 1949]

[Johore Bahru — Criminal Revision No. 4 of 1949]

Excise Enactment, Johore, ss. 22, 23, 24, 25, and 64 — Sale of beer in unopened bottles for consumption off the premises — Whether licence required.

In this case an attendant in a shop at No. 69 Jalan Trus was charged under sections 22(i) and 64 of the Excise Enactment, Johore, with selling a bottle of beer without being licensed to sell beer for consumption on the premises. Accused admitted he had no licence and was convicted. The learned Deputy Public Prosecutor submitted this case for revision in order to get a ruling as to the true meanings of sections 22 to 25 inclusive of the Excise Enactment.

Held, (1) that the sale of beer in unopened bottles for consumption off the premises requires no licence for sale; (2) that the sale of bottled beer in unopened bottles, for consumption on the premises, likewise requires no licence for sale, except in certain gazetted areas; (3) that the sale of beer in unopened bottles must be a delivery to the customer of an unopened bottle and its contents and payment or credit for same; and (4) that the storage of bottled beer for future sale must be covered by licence under section 25(i)(b) of the Excise Enactment, Johore.

CRIMINAL REVISION.

D. B. W. Good for the Public Prosecutor.

Accused in person.

Cur. Adv. Vult.

Laville, J. : — This case is an old one. On 14th December, 1948, Ling Ee Huat, an attendant in a shop at 69 Jalan Trus, was charged under section 22(i) and 64 of the Excise Enactment, Johore, with selling to P.O.D.O. No. 898 a bottle of beer without being licensed to sell beer for consumption on the premises.

Accused admitted he had no licence and was convicted and fined $1/-. The learned Deputy Public Prosecutor has submitted this case for revision in order to get a ruling as to the true meanings of sections 22 to 25 inclusive of the Excise Enactment.

Section 22(i) enacts that no person shall sell by retail any intoxicating liquor, whether for consumption on or off the premises of the vendor, unless licensed so to do and in premises specified in such licence. Beer is defined in the Enactment as an intoxicating liquor.

Section 22(ii) lays down the maximum quantity of intoxicating liquor which can be sold in one transaction by retail.

Section 22(iii) however excludes from the provisions of this section (subject to the provisions of section 25(i)(f)) the retail sale of beer in unopened bottles.

It would appear therefore that to sell bottled beer by retail whether for consumption on or off the premises of the vendor in unopened bottles requires no licence.

Section 23 deals with sale by wholesale with which this judgment is not concerned.

Section 24(i) enacts that a person licensed to sell intoxicating liquor by retail must keep it for sale in a public warehouse or a licensed warehouse or at the place specified in his licence to sell by retail.

The question therefore arises whether a person selling by retail unopened bottles of beer must have a licence to keep or store them at the place he sells them.

Section 24(ii) enacts that no unlicensed person may have in his possession intoxicating liquor except for his private consumption and not for sale.

It follows that, though under section 22(iii) the sale by retail of beer in unopened bottles need not be covered by licence, the storage of the bottled beer for future sale must be covered by a licence.

Section 25(i) gives the Licensing Board set up in any given area power to issue or transfer various forms of licence. They are :—

(a) retail-shop licences, for retail sale for consumption off the premises;
(b) public-house licences, for retail sale for consumption on the vendor's premises;
(c), (d) and (e) do not concern this judgment;
(f) beer licence, for sale by retail of beer for consumption on the premises within duly gazetted areas.

By virtue of section 22(iii), section 25(i)(a) does not apply to sale of beer in unopened bottles whether for consumption on or off the premises. Similarly section 25(i)(b) does not apply to sale of beer in unopened bottles for consumption on or off the premises. But the wording section 25(i)(f) appears to contemplate that the sale of beer by retail for consumption on the premises requires a beer licence. But this is qualified by requiring such a licence only in duly gazetted areas. It is argued that the words 'duly gazetted areas' mean the jurisdictional area of each Licensing Board, but I can find no authority for this interpretation in the Excise Enactment which nowhere lays down that the area in which a Board shall exercise control shall be gazetted. I hold that the plain meaning of section 25(i)(f) is that in certain areas within its jurisdictional area, or if it seems good to the Board within the whole of it, subject to those areas or area being duly notified by publication in the gazette to be such, the Board may require persons who sell beer, including bottled beer, by retail for consumption on the premises where it is sold to take out a licence so to do.

Reading section 25(i)(f) with section 22(iii) and section 24(ii), the result is to stock bottled beer whether for consumption on or off the premises requires a licence under section 24(ii). To sell beer in unopened bottles

whether for consumption on or off the premises requires no licence under section 22(ii), but in certain areas which must be gazetted under the provisions of section 25(i)(f), sale of beer by retail whether by the glass or by the bottle for consumption on the premises where it is sold requires a licence. In these areas therefore, if bottled beer is sold in unopened bottles with the intention that the purchaser should consume it on the premises and facilities are provided for him to do so, the vendor's premises must be licensed.

In the case under revision the beer was sold in a closed bottle, but the bottle was opened by the accused and poured out by him for the purchaser and paid for after consumption. This in my opinion does not constitute a sale of beer in unopened bottles, though it is a sale by retail. The beer could equally well have been poured out of a jug or a glass of beer from a large bottle and it could not be considered a sale of an unopened bottle of beer. For an effective sale of beer in unopened bottles there should be a transfer of the unopened bottle and its contents to the customer leaving it to him to do what he wishes with it.

The situation therefore appears to be (1) as regards sale of bottled beer, that sale in unopened bottles for consumption off the premises requires no licence for sale; (2) that sale of bottled beer in unopened bottles, for consumption on the premises, likewise requires no licence for sale, except in certain gazetted areas; (3) that the sale of beer in unopened bottles must be a delivery to the customer of an unopened bottle and its contents and payment or credit for same.

The transaction in the case under revision therefore fell under sec. 25(i)(b) and required a licence under that sub-section. The conviction and fine were therefore correct and will stand.

Conviction and sentence confirmed.

NAR SINGH AND ANOTHER v. PUBLIC PROSECUTOR.

[Court of Appeal (Willan, C.J., Taylor and Spenser-Wilkinson, JJ.) December 15, 1949]

[K.L. — Criminal Appeal No. 97 of 1949]

Criminal Trial — Accomplice — Evidence of — Testimony of accomplice and of witness who knew of commission of crime but did not disclose it — Degree of credit to be attached to the testimony of such a witness — Misdirection.

So far as the statutory provisions are concerned, there is nothing in law to justify the proposition that the evidence of a witness, who happens to be cognisant of a crime, or who made no attempt to prevent it, or who did not disclose its commission, should only be relied on to the same extent as that of an accomplice. The real question in such a case is the degree of credit to be attached to the testimony of such a witness; and that depends on all the facts and circumstances of the particular case.

Cases referred to :—

(1) *Goh Ah Yew v. Public Prosecutor* (1949) M.L.J. 150.

(2) *Hafijuddi v. Emperor* 38 C.W.N. 777 at p. 779.

CRIMINAL APPEAL.

P. J. D. Regester for the appellant.

H. Shepherd for the respondent.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

The judgment of the Court was delivered by :—

Willan, C.J. : — In this case the first and second appellants were convicted of the murder of a Chinese named Low Kim at Ooi Bek Weng Estate in the State of Kedah on the 3rd July, 1949. The learned trial Judge and the two assessors unanimously found the two appellants guilty.

The evidence for the prosecution rested almost entirely on that of Govindan, the first prosecution witness, and of Ratnam, the fourth prosecution witness. According to them it was the second appellant who "hacked" the deceased to death with a parang in the presence of the first appellant who urged the second appellant to do so.

In a long and careful summing-up the learned trial Judge first directed the assessors correctly on the law of common intention contained in section 34 of the Penal Code.

The learned trial Judge directed the assessors that Govidan should be classed as an accomplice and that his evidence must be corroborated by an independent witness in material particulars. At the trial defence Counsel submitted that the witness Ratnam was also an accomplice. The learned trial Judge rejected that submission and told the assessors that if they believed the evidence of Ratnam there was the necessary corroboration of the evidence of Govindan.

Mr. Regester, Counsel assigned for the appellant, submitted that the learned trial Judge was wrong in expressly directing the assessors that Ratnam was not an accomplice. Whilst not going so far as stating that